

AMENDED IN SENATE APRIL 14, 2010

SENATE BILL

No. 1034

Introduced by Senator Ducheny

February 12, 2010

An act to amend Section 5097.5 of, and to add ~~Chapter 1.71~~ (commencing with Section 5097.7) to Division 5 of *Section 5097.7* to, the Public Resources Code, relating to archaeological resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1034, as amended, Ducheny. Archaeological resources: civil penalties.

Existing law prohibits a person from knowingly and willfully excavating upon, or removing, destroying, injuring, or defacing, any historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints, inscriptions made by human agency, rock art, or any other archaeological, paleontological, or historical feature, situated on public lands, as defined. A violation of this prohibition is a misdemeanor.

~~This bill would enact the California Public Lands Archaeological Resources Protection Act, and would allow a state agency to issue an order that assesses a civil penalty against a person who knowingly and willfully excavates upon, or removes, destroys, injures, or defaces archaeological resources on public lands. The bill would establish procedures for the assessment of the civil penalty, including procedures for determining the commercial and archaeological value of those resources and cost of restoration. The bill would also authorize the forfeiture of the archaeological resources that were the subject of the violation and the vehicles and equipment of the person that were used in connection with the violation. The bill would allow a state agency~~

~~to expend the civil penalties collected pursuant to the act, upon appropriation by the Legislature, as reimbursement for the costs of implementing the act, including restoring and repairing the archaeological resources that are the subject of the violation, except the bill would require the state to remit to a city, county, or district the civil penalty imposed by the state, except as specified, and the items seized by the state, if the violation occurred on, or in connection with, public lands owned by, or under the jurisdiction of, that city, county, or district.~~

This bill would, instead, make that violation punishable by a fine not exceeding \$10,000, by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment. The bill would require a court to order restitution to the state agency that has primary management authority over the public lands where the violation occurred. The bill would establish procedures for determining the commercial and archaeological value of those resources and the cost of restoration and repair. The bill would also authorize the forfeiture of the archaeological resources that were the subject of the violation and the vehicles and equipment used in connection with the violation.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5097.5 of the Public Resources Code is
- 2 amended to read:
- 3 5097.5. (a) A person shall not knowingly and willfully
- 4 excavate upon, or remove, destroy, injure, or deface, any historic
- 5 or prehistoric ruins, burial grounds, archaeological or vertebrate
- 6 paleontological site, including fossilized footprints, inscriptions
- 7 made by human agency, rock art, or any other archaeological,
- 8 paleontological or historical feature, situated on public lands,
- 9 except with the express permission of the public agency having
- 10 jurisdiction over the lands.
- 11 (b) As used in this section, "public lands" means lands owned
- 12 by, or under the jurisdiction of, the state, or any city, county,
- 13 district, authority, or public corporation, or any agency thereof.
- 14 (c) ~~(1)~~—A violation of this section is a misdemeanor, *punishable*
- 15 *by a fine not exceeding ten thousand dollars (\$10,000), or by*
- 16 *imprisonment in a county jail not to exceed one year, or by both*
- 17 *that fine and imprisonment.*

~~(2) In addition to the penalty specified in paragraph (1), a civil penalty may be imposed upon a person who violates this section with respect to an archaeological resource, pursuant to Chapter 1.71(commencing with Section 5097.7).~~

(d) (1) Upon conviction, the court shall order restitution to the state agency, including any department of the state, a conservancy, or other instrumentality of the state, that has primary management authority over the public lands where the violation occurred, including public lands managed by the state under an agreement with another public entity.

(2) When determining restitution, the court shall consider evidence from the state agency to which restitution will be granted of the commercial and archaeological value of the property as follows:

(A) The commercial value of an archaeological resource involved in a violation shall be its fair market value. If the violation has resulted in damage to the archaeological resource, the state agency shall determine the fair market value using the condition of the archaeological resource prior to the violation to the extent that its prior condition can be ascertained. For purposes of this subparagraph, "fair market value" means the price that a seller is willing to accept and a buyer is willing to pay on the open market.

(B) The archaeological value of an archaeological resource involved in a violation shall be the value of the information associated with the archaeological resource. The state agency shall appraise the value in terms of the costs of the retrieval of the scientific information that would have been obtainable prior to the violation.

(C) The costs considered for restitution may include, but are not limited to, the cost of preparing a research design, conducting background research, conducting field work, carrying out laboratory analyses, and preparing reports that would be necessary to realize the information potential of the resource.

(D) The state agency shall follow the professional standards for determining commercial and archaeological value, in accordance with those procedures established in the federal Archaeological Resources Protection Act of 1979 (Public Law 96-95), as amended, and in compliance with the Uniform

1 *Regulations set forth in Subpart A (commencing with Section 7.1)*
2 *of Part 7 of Title 43 of the Code of Federal Regulations.*

3 *(E) For the purposes of restitution, the court shall consider the*
4 *cost of restoration and repair of archaeological resources damaged*
5 *as a result of a violation as well as the costs already incurred for*
6 *emergency restoration or repair work, plus those costs projected*
7 *by the state agency necessary to complete restoration and repair;*
8 *that may include, but are not limited to, the costs of any one or*
9 *more of the following:*

10 *(i) Reconstruction of the archaeological resource.*

11 *(ii) Stabilization of the archaeological resource.*

12 *(iii) Ground contour reconstruction and surface stabilization.*

13 *(iv) Research necessary to carry out reconstruction or*
14 *stabilization.*

15 *(v) Physical barriers or other protective devices necessitated*
16 *by the disturbance of the archaeological resource to protect it*
17 *from further disturbance.*

18 *(vi) Examination and analysis of the archaeological resource,*
19 *including recording remaining archaeological information where*
20 *necessitated by disturbance in order to salvage remaining values*
21 *that cannot be otherwise conserved.*

22 *(vii) Reinterment of human remains in accordance with religious*
23 *customs and federal, state, local, or tribal law, where appropriate.*

24 ~~SEC. 2. Chapter 1.71 (commencing with Section 5097.7) is~~
25 ~~added to Division 5 of the Public Resources Code, to read:~~

26
27 ~~CHAPTER 1.71. CALIFORNIA PUBLIC LANDS ARCHAEOLOGICAL~~
28 ~~RESOURCES PROTECTION ACT~~
29

30 ~~5097.7. (a) The Legislature hereby finds and declares all of~~
31 ~~the following:~~

32 ~~(1) Archaeological resources on public lands are an accessible~~
33 ~~and irreplaceable part of California's heritage.~~

34 ~~(2) These resources are increasingly endangered because of~~
35 ~~their commercial attractiveness.~~

36 ~~(3) Existing state laws do not provide adequate protection to~~
37 ~~prevent the loss and destruction of these archaeological resources~~
38 ~~and sites resulting from uncontrolled excavations and pillage.~~

39 ~~(4) There is a wealth of archaeological information that has~~
40 ~~been legally obtained by private individuals for noncommercial~~

1 ~~purposes and which could voluntarily be made available to~~
2 ~~professional archaeologists and institutions.~~

3 ~~(b) The purpose of this chapter is to secure, for the present and~~
4 ~~future benefit of the people of California, the protection of~~
5 ~~archaeological resources and sites that are on public lands, and to~~
6 ~~foster increased cooperation and exchange of information between~~
7 ~~state authorities, the professional archaeological community, and~~
8 ~~private individuals having collections of archaeological resources~~
9 ~~and data that were obtained before January 1, 2011.~~

10 ~~(c) This chapter shall be known and may be cited as “The~~
11 ~~California Public Lands Archaeological Resources Protection Act.”~~

12 ~~5097.7.1. For purposes of this chapter the following definitions~~
13 ~~shall apply:~~

14 ~~(a) (1) “Archaeological resource” means material remains of~~
15 ~~past human life or activities that are of archaeological interest,~~
16 ~~pursuant to the criteria and methods developed by the State~~
17 ~~Historical Resources Commission pursuant to Section 5020.5.~~

18 ~~(2) “Archaeological resources” include, but are not limited to,~~
19 ~~pottery, basketry, beads, bottles, weapons, weapon projectiles,~~
20 ~~tools, structures or portions of structures, pit houses, rock paintings,~~
21 ~~rock carvings, intaglios, graves, human skeletal materials, animal~~
22 ~~bones, and other human subsistence remains, or any portion or~~
23 ~~piece of any of these items.~~

24 ~~(3) “Archaeological resources” do not include nonfossilized or~~
25 ~~fossilized paleontological specimens, or any portion or piece~~
26 ~~thereof, unless these specimens were found in an archaeological~~
27 ~~context.~~

28 ~~(4) “Archaeological resources” do not include an item that is~~
29 ~~less than 50 years of age.~~

30 ~~(b) “Person” means an individual, corporation, partnership,~~
31 ~~trust, institution, association, or any other private entity or a officer,~~
32 ~~employee, agent, department, or instrumentality of the United~~
33 ~~States, of a Native American tribe, or of any state or political~~
34 ~~subdivision of a state.~~

35 ~~(c) “Public lands” has the same meaning as defined in~~
36 ~~subdivision (b) of Section 5097.5.~~

37 ~~(d) “Public lands manager” means, with respect to public lands~~
38 ~~owned by, or under the jurisdiction of, the state, the staff of a~~
39 ~~department, or the head of any other agency or instrumentality of~~
40 ~~the state, that has primary management authority over those public~~

1 lands. In the case of public lands with respect to which no
2 department, agency, or instrumentality of the state has primary
3 management authority, public lands manager means the Secretary
4 of the Natural Resources Agency.

5 (e) “State agency” includes both of the following:

6 (1) A department of the state, a conservancy, or other
7 instrumentality of the state that has primary management authority
8 over public lands, including public lands managed by the state
9 under an agreement with another public entity.

10 (2) A public lands manager.

11 5097.7.2. (a) (1) A state agency may issue an order that
12 assesses a civil penalty pursuant to this chapter against a person
13 who violates Section 5097.5 by knowingly and willfully excavating
14 upon, or removing, destroying, injuring, or defacing, an
15 archaeological resource situated on public lands.

16 (2) A state agency shall not assess a penalty unless the person
17 is given notice and opportunity for a hearing with respect to that
18 violation in accordance with Chapter 4.5 (commencing with
19 Section 11400) of Part 1 of Division 3 of Title 2 of the Government
20 Code.

21 (3) A state agency may remit or mitigate the penalty imposed
22 pursuant to this section.

23 (4) A state agency shall determine the amount of the civil
24 penalty based on both of the following:

25 (A) The archaeological or commercial value of the
26 archaeological resource involved, as determined pursuant to
27 subdivision (a) of Section 5097.7.4.

28 (B) The cost of restoration and repair of the archaeological
29 resource and the archaeological site involved, as determined
30 pursuant to subdivision (b) of Section 5097.7.4.

31 (5) The state agency may, in the case of a second or subsequent
32 violation by a person, double the amount of the civil penalty that
33 would have been assessed if that violation were the first violation
34 by that person.

35 (6) The amount of a penalty assessed under this section for a
36 violation shall not exceed the amount equal to double the cost of
37 restoration and repair of resources and archaeological sites
38 damaged and double the fair market value of resources destroyed
39 or not recovered.

40 (7) Each violation shall be a separate offense.

1 ~~(b) (1) A person aggrieved by an order assessing a civil penalty~~
2 ~~pursuant to subdivision (a) may seek judicial review by filing a~~
3 ~~petition for a writ of mandate in accordance with Section 11523~~
4 ~~of the Government Code. The petition shall be filed within the~~
5 ~~30-day period beginning on the date the order making the~~
6 ~~assessment was issued. The court shall hear that action on the~~
7 ~~record made before the state agency and shall sustain the order if~~
8 ~~it is supported by substantial evidence on the record considered~~
9 ~~as a whole.~~

10 ~~(2) If a person fails to pay an assessment of a civil penalty after~~
11 ~~the order making the assessment has become a final order and the~~
12 ~~person has not filed a petition for judicial review of the order in~~
13 ~~accordance with paragraph (1), or after a court in an action brought~~
14 ~~under paragraph (1) has entered a final judgment upholding the~~
15 ~~assessment of a civil penalty, the state agency may request the~~
16 ~~Office of the Attorney General to institute a civil action in the~~
17 ~~court for any district in which the person is found, resides, or~~
18 ~~transacts business to collect the penalty, and the court shall have~~
19 ~~jurisdiction to hear and decide the action. In an action brought~~
20 ~~pursuant to this paragraph, the validity and amount of the penalty~~
21 ~~shall not be subject to review.~~

22 ~~(c) (1) The state agency may issue subpoenas for the attendance~~
23 ~~and testimony of witnesses and the production of relevant papers,~~
24 ~~books, and documents, and administer oaths. A witness summoned~~
25 ~~shall be paid the same fees and mileage that are paid to a witness~~
26 ~~in the courts of the state.~~

27 ~~(2) In case of contumacy or refusal to obey a subpoena served~~
28 ~~upon any person pursuant to this subdivision, the court for any~~
29 ~~district in which the person is found or resides or transacts business,~~
30 ~~upon application by the state agency and after notice to that person,~~
31 ~~shall have jurisdiction to issue an order requiring that person to~~
32 ~~appear and give testimony before the state agency or to appear and~~
33 ~~produce documents before the state agency, or both, and a failure~~
34 ~~to obey that order of the court may be punished by the court as a~~
35 ~~contempt of court.~~

36 ~~5097.7.3. (a) All items specified in subdivision (b) are subject~~
37 ~~to forfeiture and seizure by the state, in any of the following~~
38 ~~circumstances:~~

39 ~~(1) The person's conviction of a violation under Section 5097.5.~~

~~(2) An assessment of a civil penalty against a person pursuant to Section 5097.7.2 for a violation of Section 5097.5.~~

~~(3) A determination by a court that those archaeological resources, vehicles, or equipment were involved in a violation of Section 5097.5.~~

~~(b) The items subject to forfeiture shall include the archaeological resources with respect to which a violation of Section 5097.5 occurred and that are in the possession of the person, and all vehicles and equipment of the person that were used in connection with the violation.~~

~~(c) If an item subject to forfeiture is obtained with respect to a violation of Section 5097.5 on, or in connection with, public land that is owned by or under the jurisdiction of a city, county, or district, the item shall be remitted to that city, county, or district.~~

~~5097.7.4. For purposes of issuing an order imposing a civil penalty pursuant to Section 5097.7.2, a state agency shall determine the commercial and archaeological value, and cost of restoration pursuant to this section.~~

~~(a) The commercial and archaeological value shall be determined in the following manner:~~

~~(1) (A) The commercial value of any archaeological resource involved in a violation shall be its fair market value. If the violation has resulted in damage to the archaeological resource, the state agency shall determine the fair market value using the condition of the archaeological resource prior to the violation to the extent that its prior condition can be ascertained.~~

~~(B) For purposes of this paragraph, “fair market value” means the price that a seller is willing to accept and a buyer is willing to pay on the open market.~~

~~(2) (A) The archaeological value of any archaeological resource involved in a violation shall be the value of the information associated with the archaeological resource. The state agency shall appraise this value in terms of the costs of the retrieval of the scientific information that would have been obtainable prior to the violation.~~

~~(B) The costs specified in subparagraph (A) may include, but are not limited to, the cost of preparing a research design, conducting background research, conducting field work, carrying out laboratory analyses, and preparing reports that would be necessary to realize the information potential of the resource.~~

1 ~~(3) The state agency shall follow the professional standards for~~
2 ~~determining commercial and archaeological value, in accordance~~
3 ~~with those procedures established in the Archaeological Resources~~
4 ~~Protection Act (ARPA) Uniform Regulations.~~

5 ~~(b) A state agency shall determine the cost of restoration and~~
6 ~~repair of archaeological resources damaged as a result of a violation~~
7 ~~of Section 5097.5 as the costs already incurred for emergency~~
8 ~~restoration or repair work, plus those costs projected by the state~~
9 ~~agency necessary to complete restoration and repair, which may~~
10 ~~include, but are not limited to, the costs of any one or more of the~~
11 ~~following:~~

12 ~~(1) Reconstruction of the archaeological resource.~~

13 ~~(2) Stabilization of the archaeological resource.~~

14 ~~(3) Ground contour reconstruction and surface stabilization.~~

15 ~~(4) Research necessary to carry out reconstruction or~~
16 ~~stabilization.~~

17 ~~(5) Physical barriers or other protective devices necessitated by~~
18 ~~the disturbance of the archaeological resource to protect it from~~
19 ~~further disturbance.~~

20 ~~(6) Examination and analysis of the archaeological resource,~~
21 ~~including recording remaining archaeological information where~~
22 ~~necessitated by disturbance in order to salvage remaining values~~
23 ~~that cannot be otherwise conserved.~~

24 ~~(7) Reinterment of human remains in accordance with religious~~
25 ~~customs and state, local, or tribal law, where appropriate.~~

26 ~~(8) Preparation of reports related to any of the activities specified~~
27 ~~in paragraphs (1) to (7), inclusive.~~

28 ~~(c) If the violation of Section 5097.5 involves damage to in situ~~
29 ~~archaeological resources, the state agency shall determine both~~
30 ~~the archaeological value pursuant to subdivision (a) and the cost~~
31 ~~of restoration and repair pursuant to subdivision (b).~~

32 ~~5097.7.5. —(a) Except as provided in subdivision (b), a state~~
33 ~~agency may expend the civil penalties collected pursuant to this~~
34 ~~chapter, upon appropriation by the Legislature, as reimbursement~~
35 ~~for the costs of implementing this chapter, including restoring and~~
36 ~~repairing the archaeological resources that are the subject of the~~
37 ~~violation.~~

38 ~~(b) If a violation of Section 5097.5 occurred on, or in connection~~
39 ~~with, public land owned by, or under the jurisdiction of, a city,~~
40 ~~county, or district, the state shall remit the civil penalty to the city,~~

1 county, or district, but may retain the amount of costs relating to
2 the filing and prosecution of the civil penalty.

3 SEC. 2. Section 5097.7 is added to the Public Resources Code,
4 to read:

5 5097.7. Upon a conviction pursuant to Section 5097.5, the
6 following items may be subject to forfeiture:

7 (a) The archaeological resource that was the subject of the
8 violation, and that is in the possession of the person.

9 (b) (1) A vehicle that was used in connection with the violation
10 if the vehicle to be forfeited was not merely a means of
11 transportation to the site but was either of the following:

12 (A) The vehicle was specifically modified or designed to assist
13 in the commission of the crime.

14 (B) The vehicle was used as part of a pattern or scheme to
15 commit the offense.

16 (2) A vehicle that is subject to forfeiture shall be released to the
17 legal owner or his or her agent pursuant to the procedures set
18 forth in subdivision (e) of Section 21100.4 of the Vehicle Code. A
19 legal owner or his or her agent that obtains a release of the vehicle
20 shall not release the vehicle to the person convicted of a violation
21 of Section 5097.7.

22 (3) If there is a community property interest in the vehicle
23 subject to forfeiture, the court shall consider whether there is
24 another vehicle available to the party with that interest before
25 ordering forfeiture of the vehicle.

26 (c) Equipment used in the violation.